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September 7, 2018

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave., NW
Washington, D.C. 20528

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Dear Secretary Nielsen and Secretary Azar:

We write today out of concern with Department of Homeland Security and Department of Health and Human Services actions to undermine the Flores Settlement. These actions come on the heels of the Administration's cruel zero-tolerance policy that ripped over 2,600 children from their parents, nearly 500 of whom remain in the Office of Refugee Resettlement's custody. The Departments' proposed regulations published today in the Federal Register would strip crucial protections required under the Flores Settlement, leading to the prolonged detention of children in detention facilities.

The Flores lawsuit was filed in 1985 in response to the U.S. government's detention of children with unrelated adults in prison-like conditions for lengthy periods, without access to education, recreation, or family visitation. Moreover, children detained in these harsh conditions were subject to routine strip searches, including vaginal strip searches.^[1]

The 1997 Flores Settlement ensures that children are treated humanely in detention. Under the terms of the Flores Settlement, children must be held in the least restrictive setting and released from federal custody without unnecessary delay. The settlement also sets forth a preference for family unity in releasing a child from detention. In 2015, a federal judge ruled that the Flores Settlement limits the time a child can be detained to 20 days.

We strongly believe that the proposed regulation would be harmful to immigrant children and families seeking refuge in the United States. Numerous health groups have stated that detention of any length is unsafe for children and makes them more susceptible to long-term mental health risks. For example, the American Academy of Pediatrics has long argued that even short periods of detention lead to increased stress, developmental delay, and psychological trauma for children.^[2]

Furthermore, since the creation of family detention centers, numerous lawsuits and reports have highlighted the substandard conditions that women and children already face in family detention centers, including verbal abuse, poor medical treatment, and sexual assault.[3]

The child welfare standards established in the Flores Settlement have already been upheld in federal court this year. On July 9, 2018, Judge Dolly Gee of the U.S. District Court for the Central District of California rejected the Administration's attempts to modify the Flores Settlement and permit the long-term detention of children in order to fulfill its family separation agenda.[4] Additionally, on July 27, 2018, Judge Gee ordered that a Special Master/Independent Monitor be appointed to oversee compliance with the Flores Settlement's requirements.

Instead of the long-term detention of families in jail-like settings, the Administration should rely on alternatives to detention programs with case management services that are cost-efficient, more effective than detention, and treat immigrants with dignity and respect. The Family Case Management Program, a program terminated by President Trump in 2017, had a success rate of 99 percent of individuals appearing for their court date. This program also cost only \$36 per day per family compared to a cost of \$320 per family member per day in detention.

Women and children have already experienced considerable violence, stress, and trauma in their home country and during their journey to the United States. They deserve to be treated with compassion and respect when they arrive at our borders and navigate their legal right to seek asylum. We therefore urge the Departments to withdraw its proposed regulations and work with us to re-establish a family case management program.

Sincerely,

Cc: Jeff Sessions, Attorney General, Department of Justice

[1] NBC News, *When Migrant Children Were Detained Among Adults, Strip Searched* (Jul. 24, 2014) available at: <https://www.nbcnews.com/storyline/immigration-border-crisis/when-migrant-children-were-detained-among-adults-strip-searched-n161956>.

[2] Julie M. Linton, Marsha Griffin, & Alan J. Shapiro, *Detention of Immigrant Children*, American Academy of Pediatrics (Mar. 2017) available at: <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>

[3] Katharina Obser, *Backgrounder: The Harm of Family Detention*, Women's Refugee Commission, (Jun. 2018) available at: <https://www.womensrefugeecommission.org/images/zdocs/WRC-harm-of-family-detention.pdf>

[4] Andrew Hay, *Judge rejects Trump request for long-term detention of immigrant children*, Reuters (Jul. 9, 2018) available at: <https://www.reuters.com/article/us-usa-immigration-ruling/judge-rejects-trump-request-for-long-term-detention-of-immigrant-children-idUSKBN1K002N>